IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 179 of 1998

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GHIASUDDIN SHAIKH HUSAIN SHAIKH & 1 - Petitioner(s)
Versus
CAMBAY CO OP URBAN SOCIETY LTD & 2 - Respondent(s)

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Appearance :
MR ASHOK K PADIA for Petitioner(s) : 1 - 2.
MS NIKITA BHALARA FOR MR BS PATEL for Respondent(s) : 1,
MRS RANJAN B PATEL for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/05/2007

ORAL JUDGMENT

1. Mr.Ashok Padia, learned counsel for the petitioners, Ms.Nikita Bhalara under the authority of Mr.B.S. Patel, learned counsel for the respondent No.1. None for the respondent Nos.2 and 3, though served.

2. By this writ application, the petitioners seek to challenge the correctness, validity and propriety of the order dtd.18/4/1995 passed in Lavad Case No.1253 of 1994 by the respondent No.2 directing a decree in favour of the respondent No.1 and the order dtd.28/11/1997 passed by the Gujarat Cooperative Tribunal in Appeal No.414 of 1995 by the respondent No.3.

3. Short facts necessary for disposal of the present case are that on 2/4/1986, the petitioners applied for a loan of Rs.5000=00 which was accordingly granted in favour of the petitioners, the petitioners were required to pay 20% interest per annum, on the said amount. As the petitioners did not pay the amount right in time, the respondent - creditor society filed Lavad Case No.1253 of 1994. The petitioners did not appear despite the notice, therefore, the Board of Nominee proceeded ex-parte and decreed the suit for principal amount of Rs.5000=00 with interest at the rate of 20% per annum. Appeal against the said order was dismissed, therefore, petitioners are before this Court.

4. Learned counsel for the petitioners submit that no

appropriate opportunity of hearing was given to the petitioners, therefore, the impugned orders deserve to be set aside.

5. Unfortunately the record does not contain any material to show that appropriate opportunity was not afforded to the petitioners.

6. It was further contended by the learned counsel for the petitioners that the compound interest at the rate of 20% per annum could not be allowed in favour of the respondent – Creditor society.

7. On being asked that what were the terms of agreement, learned counsel for the petitioners submits that copy of the agreement has also not been filed. If that is so, it would be the end of the matter.

8. It was then contended that the statement of the witnesses, for and on behalf of the creditor society, were taken on a printed form which is contrary to law.

9. On being asked to show the said statement, learned counsel for the petitioners again submitted that such

document is not on the record. In absence of the document, a plea, that the contents of the documents are illegal or were illegally recorded, would not be available.

10. Taking into totality of the circumstances, I do not think that present petition raises any question which deserves consideration by this Court under Article 227 of the Constitution of India.

11. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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